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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 90\*  
133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Sens. Thomas and Craig

Kelly Bomba, Attorney

UPDATED VERSION

### SUMMARY

- Increases the basic state minimum wage to \$12.00 per hour beginning January 1, 2020.
- Increases the basic state hourly minimum wage rate by \$1.00 each year for the following three years, beginning January 1 of the respective year.
- Increases the state hourly minimum wage rate for tipped employees to \$6.00 per hour beginning January 1, 2020.
- Increases the state hourly minimum wage for tipped employees by \$.50 each year for the following three years, beginning January 1 of the respective year.
- Requires, beginning January 1, 2024, the minimum wage rates to be adjusted annually based on the Consumer Price Index, in accordance with Ohio's constitutional minimum wage requirements.
- Allows a municipal corporation, township, or county to establish within the jurisdiction of the respective political subdivision a local minimum wage rate that exceeds the minimum wage rate required under state law.

### DETAILED ANALYSIS

#### State minimum wage for nontipped employees

The bill raises the state minimum wage rate to \$12.00 per hour beginning January 1, 2020. (Because this date has passed, it is unclear when the bill would be implemented. An amendment may be necessary to address this issue.) It also increases the hourly minimum

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\* This version updates the current minimum wage, which was calculated for 2020 after publication of the original version, and updates a citation to reflect evolving case law.

wage by \$1.00 each year for the following three years. The following table identifies the minimum wage under the bill an employee who does not receive tips must be paid during the listed year:<sup>1</sup>

Year	Hourly wage rate (nontipped employee)
2020	\$12.00
2021	\$13.00
2022	\$14.00
2023	\$15.00

Under current law, the basic state minimum wage is \$8.70 per hour. The basic state minimum wage is currently set pursuant to the Minimum Wage Amendment of the Ohio Constitution (MWA). The MWA requires the basic state minimum wage to be increased annually according to the Consumer Price Index or its successor index for all urban wage earners and clerical workers for all items as calculated by the federal government, rounded to the nearest five cents. However, the MWA allows laws to be passed that set the state minimum wage at a rate higher than the rate calculated pursuant to the MWA.<sup>2</sup> The bill establishes scheduled increases in the minimum wage rate and, beginning January 1, 2024, requires the Director of Commerce, who administers and enforces the law, to adjust the minimum wage rate annually in accordance with the MWA.<sup>3</sup>

The bill applies the minimum wage rates listed above to employees who are under 16 years of age or who are employed by a business with gross annual receipts of \$319,000 or less in 2019. Currently, pursuant to the MWA, these employees must be paid at least the federal minimum wage rate, which is \$7.25 per hour. Under the MWA, the amount of gross annual receipts is adjusted annually based on the Consumer Price Index.<sup>4</sup>

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<sup>1</sup> R.C. 4111.02(A)(1).

<sup>2</sup> Ohio Constitution, Article II, Section 34a; Ohio Department of Commerce Division of Industrial Compliance, *State of Ohio 2020 Minimum Wage*, [https://www.com.ohio.gov/documents/dico\\_2020MinimumWageposter.pdf](https://www.com.ohio.gov/documents/dico_2020MinimumWageposter.pdf).

<sup>3</sup> R.C. 4111.02, with conforming changes in R.C. 4111.09 and 4111.14. (R.C. 4111.02(B) appears to contain a drafting error. The bill references division (A)(1)(g) of the section, which does not exist. It appears that the bill should have referenced division (A)(1)(d) of the section.)

<sup>4</sup> R.C. 4111.02; Ohio Const., art. II, sec. 34a; 29 United States Code (U.S.C.) 206; Ohio Department of Commerce Division of Industrial Compliance, *State of Ohio 2020 Minimum Wage*, [https://www.com.ohio.gov/documents/dico\\_2020MinimumWageposter.pdf](https://www.com.ohio.gov/documents/dico_2020MinimumWageposter.pdf).

## State minimum wage for tipped employees

Under continuing law, tipped employees may be paid less than, but not less than half, the basic state minimum wage rate if the employer is able to demonstrate that the employee receives tips that combined with the wages paid by the employer are equal to or greater than the state minimum wage rate for all hours worked. Because the bill raises the state minimum wage, the minimum wage for tipped employees (\$4.35 per hour in 2020) would also increase. The following table identifies the minimum wage under the bill a tipped employee must be paid during the listed year:<sup>5</sup>

Year	Hourly wage rate (tipped employee)
2020	\$6.00
2021	\$6.50
2022	\$7.00
2023	\$7.50

## Apprentices

The bill also eliminates the authority of the Director to adopt rules permitting the employment of apprentices at a wage rate not less than 85% of the state minimum wage. The Director has not adopted these rules.<sup>6</sup>

## Relationship between state and federal law

The federal Fair Labor Standards Act<sup>7</sup> (FLSA) and Ohio's minimum wage laws both specify minimum wages that an employer must pay the employer's employees. An employer may be subject to one or both laws. The FLSA specifies that if an employer is subject to both laws, the employer is governed by the law that establishes the higher minimum wage, or, for purposes of determining overtime, the lower maximum workweek.<sup>8</sup> Currently, Ohio has the same maximum workweek as specified in the FLSA (40 hours per week) but has a higher basic minimum wage (\$8.70 in 2020) as compared to the basic minimum wage under the FLSA (\$7.25 per hour). Thus, employers subject to both laws pay the state rate under current law and under the bill.

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<sup>5</sup> R.C. 4111.02(A)(2); Ohio Const., art. II, sec. 34a; Ohio Department of Commerce Division of Industrial Compliance, *State of Ohio 2020 Minimum Wage*, [https://www.com.ohio.gov/documents/dico\\_2020MinimumWageposter.pdf](https://www.com.ohio.gov/documents/dico_2020MinimumWageposter.pdf).

<sup>6</sup> R.C. 4111.07 (repealed).

<sup>7</sup> 29 U.S.C. 201 *et seq.*

<sup>8</sup> 29 U.S.C. 218.

## Political subdivision authority to set a minimum wage

The bill allows a municipal corporation, township, or county to establish within the jurisdiction of the respective political subdivision a local minimum wage rate that exceeds the minimum wage rate required under state law. The bill requires an employer who is subject to more than one minimum wage requirement to pay the employer's employees the highest minimum wage, notwithstanding the requirement that if a charter county resolution or home rule township resolution conflicts with a municipal ordinance, the municipal ordinance prevails. Under current law, a political subdivision is prohibited from establishing a minimum wage rate that differs from state law.<sup>9</sup> (See **COMMENT**, below.)

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### COMMENT

It is unclear whether a political subdivision has the authority to adopt an ordinance or resolution setting a minimum wage for the private sector.

Under Article XVIII, Section 3 of the Ohio Constitution (the "Home Rule Amendment"), municipal corporations have the authority to adopt and enforce, within their limits, local police, sanitary, and similar regulations that do not conflict with general laws. Under Section 34, Article II of the Ohio Constitution ("Section 34"), the General Assembly may pass laws fixing and regulating the hours of labor, establishing a minimum wage, and providing for the general welfare of all employees. Under Section 34, no other provision of the Constitution may impair or limit the General Assembly's power under Section 34.

The MWA, however, states:

Laws may be passed to implement its provisions and create additional remedies, increase the minimum wage rate and extend the coverage of the section, but in no manner restricting any provision of the section or the power of municipalities under Article XVIII of this constitution with respect to the same.<sup>10</sup>

Because no court case appears to have determined how the Home Rule Amendment, Section 34, and the MWA interact, the constitutionality of a state law that allows a political subdivision to adopt its own minimum wage is unclear.

Additionally, it is unclear if the provision is an impermissible delegation of legislative authority. As discussed above, the Ohio Constitution directly grants the General Assembly the power to enact laws setting a minimum wage. It is not clear whether any political subdivision has the authority under the Constitution. Thus, it is not clear whether the General Assembly can delegate this power.

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<sup>9</sup> R.C. 4111.02(C), by reference to R.C. 302.13 and 504.04(D), not in the bill.

<sup>10</sup> Ohio Const., art. II, sec. 34a.

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## HISTORY

Action	Date
Introduced	03-06-19

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